

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:05CR145
)	
v.)	
)	
JESUS HINOJOSA,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on the report and recommendation of the magistrate judge (Filing NO. 104), recommending that defendant's motion to suppress (Filing No. 40) should be granted, and the objection and brief of the government in opposition to the magistrate judge's report and recommendation (Filing No. 110).

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the transcript of the testimony, the exhibits, closing arguments of the parties, and the briefs filed with the magistrate judge, as well as the brief of the government in opposition to the magistrate judge's report and recommendation.

The underlying issue presented by the government's objection goes to the credibility determination of the magistrate judge. The government takes exception to the magistrate judge's discrediting both Officer Gassoway's recollection of the events in gaining entrance to the residence. The magistrate judge found that because entrance to the residence was tainted, any physical evidence or statements obtained while in the residence should be

suppressed. The magistrate judge had an opportunity to observe the witnesses and to judge the reasonableness of their testimony.

Reviewing all of the evidence, the Court finds that the evidence supports the findings and conclusions of the magistrate judge. Accordingly, the Court approves and adopts the magistrate judge's findings and recommendations and will grant defendant's motion to suppress. Accordingly,

IT IS ORDERED:

1) The report and recommendation of the magistrate judge (Filing No. 104) is approved and adopted;

2) The objection and opposition to the magistrate judge's report and recommendation is overruled;

3) Defendant's motion to suppress (Filing No. 40) is granted. The evidence and all statements made by Jesus Hinosa on February 16, 2005, after the illegal entry at the residence of 5247 South 22nd Street, Omaha, Nebraska, are suppressed.

DATED this 27th day of January, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court